

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL No. 1456

Civil Action No. 01-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO THE
MASTER CONSOLIDATED CLASS ACTION

Chief Magistrate Judge
Marianne B. Bowler

UNOPPOSED MOTION FOR AMENDMENT OF NOVEMBER 2, 2004
ELECTRONIC ORDER

Defendants hereby move for amendment of the Court's Electronic Order entered November 2, 2004 denying the Plans' Motion to Quash and granting in part Defendants' Motion to Compel deposition testimony from the Plans. Defendants' counsel has conferred with counsel for Third Parties Aetna U.S. Healthcare, Humana, Inc., and CIGNA Corporation (the "Plans") regarding this Motion, and can report that the Plans do not oppose this Motion.¹

In further support of this motion, the Defendants state:

1. In granting in part Defendants' Motion to Compel deposition testimony, the Court ordered that the subject matter of the depositions shall be limited to item numbers 1-3, 5-7, 11-13, 16-17, and 20-21 as set forth in the list attached to Defendants' August 23, 2004 letter ("Deposition Subjects"). See Electronic Order attached as Exhibit A; August 23, 2004 letter attached as Exhibit B.

2. The Deposition Subjects on which the Court allowed depositions to proceed were

¹ By joining this motion, the Plans, however, do not intend to waive their right to object to these categories in any objection they may file pursuant to Rule 72(a).

those that “reiterate[d] topics encompassed in the list of documents to be produced attached to the re-noticed deposition subpoenas.” *See* Ex. A. *See also* Deposition Subpoenas attached as Exhibit C.

3. However, the Court did not allow deposition to proceed on subjects 8-10 listed in the August 23, 2004 letter, apparently on the basis that these topics were new and were not encompassed by the document requests attached to the original subpoena. *See* Ex. A.

4. In fact, Deposition Subjects 8-10 relate to the Plans relationships with PBMs, and are encompassed by Document Request 18 and 19 from the re-noticed deposition subpoenas.

5. Specifically, Deposition Subject 8-10 state as follows (Ex. B):

8. Your clients’ relationship(s), if any, with any **PBM**.

9. All rationales, information, and factors your clients’ considered in deciding whether to do business with a **PBM** and in deciding which PBM, if any, to use.

10. The identity of each person who participated in or had knowledge of the decision whether or not to do business with a **PBM**.

6. These Deposition Subjects are encompassed by Document Requests 18 and 19 of the re-noticed deposition subpoenas. Document Request 18 states (Ex. C):

All documents relating or referring to your contractual relationships with **PBM**s, third party administrators, benefit consultants, auditors, wholesalers, manufacturers, independent practice associations, pharmacies or providers insofar as they cover subject drugs, including, without limitation, master agreements, addenda, schedules, attachments, requests for proposal, responses to requests for proposal and correspondence.

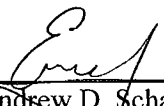
Document Request 19 states (Ex. C):

Documents sufficient to identify all persons involved in negotiation of contractual relationships with **PBM**s, third party administrators, benefit consultants, auditors, wholesalers, manufacturers, independent practice associations, pharmacies or providers insofar as they cover any subject drug.

WHEREFORE, Defendants respectfully move this Court for the entry of the Proposed Order Amending the November 2, 2004 Electronic Order, attached hereto.

Dated: November 8, 2004

Respectfully submitted,

By: 

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[PROPOSED] ORDER
AMENDING THE NOVEMBER 2, 2004 ELECTRONIC ORDER

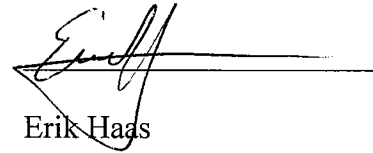
IT IS HEREBY ORDERED that the Electronic Order entered by the Court on November 2, 2004 is amended to add subject matters 8, 9 and 10 from the list attached to the August 23, 2004 letter to the list of deposition subjects for the depositions of third parties Aetna U.S. Healthcare, Humana, Inc., and CIGNA Corporation.

Dated: November __, 2004

MARIANNE B. BOWLER
CHIEF MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2004 I caused a true and correct copy of Joint Motion for Amendment of November 2, 2004 Electronic Order to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.



Erik Haas